



The State of New Hampshire
Department of Environmental Services

Clark B. Freise, Assistant Commissioner



January 25, 2017

The Honorable Chris Christensen, Chair
House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB376 *AN ACT* requiring construction projects that disturb sediments of estuarine waters to analyze the characteristics of the sediments and report them to the department of environmental services.

Dear Chair Christensen and Members of the Committee:

Thank you for the opportunity to comment on HB 376. This bill would require persons commencing construction projects that disturb sediments of estuarine waters to analyze many of the chemical characteristics of the marine sediments and report the testing data to the New Hampshire Department of Environmental Services (NHDES). The bill would also prohibit the approval of a permit if contamination is discovered. NHDES takes no position on this legislation but notes a number of concerns for your consideration.

First, this proposed legislation appears to be misplaced in terms of which RSA it amends. Tidal waters are currently regulated under RSA 482-A (Fill and Dredge in Wetlands). The bill places the amendment under RSA 483-B (Shoreland Water Quality Protection Act - SWQPA) which addresses land-based activities for the first 250 feet above the highest observable tide line (HOTL). RSA 483-B does not regulate any activities below the HOTL, so this would be a significant expansion of the SWQPA.

Second, this legislation may not be needed. Presently, any project that disturbs the tidal waters requires a standard dredge and fill permit. Under current practice and the authority of Env-Wt 302.04 (criteria for wetlands permits) and Env-Wq 1700 (water quality standards), NHDES requires sediment sampling for many projects in estuarine water.

Third, NHDES generally requires chemical analysis of any sediments if there is sufficient reason to believe that the sediments may be contaminated. Recently, NHDES produced dam removal sediment management guidance, of which a key component is a Due Diligence Review (attached) to determine if the impounded sediment is likely to be contaminated and if

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sediment testing should be required. If, upon reviewing the results of the Due Diligence Review, NHDES finds that the likelihood of contaminated sediments is low, sediment testing may not be required, or required at a reduced intensity. Another key part of the Due Diligence Review is a grain size analysis which is important because most contaminants adhere to fine grained materials. Sands and gravels are generally very clean. A requirement to conduct a similar due diligence review for estuarine waters may be a better alternative than subjecting all projects in estuarine waters to contaminant testing. Sediment sampling is very expensive. For the chemicals listed in the proposed legislation, the laboratory cost alone would likely exceed \$2,000 per sample, not taking into consideration the sometimes considerable expense of collecting the sample.

NHDES' primary concern with the bill is the final statement under III-a, which mandates that no permit shall be issued if contamination is discovered and deemed hazardous by the department. Setting aside the important issues associated with the lack of standards for many chemicals, especially emerging contaminants, contaminant concerns in sediments can often be avoided or mitigated. Most projects are able to mitigate the impacts of contamination or implement measures to avoid contamination of nearby areas through the use of best management practices. The prohibition on permit issuance could have a major impact on municipal and state infrastructure projects from sewer replacement to bridge or highway repair or maintenance of the state's navigable waterways.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact Ted Diers, Watershed Management Bureau Administrator (ted.diers@des.nh.gov or 271-3289) or Collis Adams, Wetlands Bureau Administrator (collis.adams@des.nh.gov or 271-4054).

Sincerely,



Clark B. Freise

Assistant Commissioner

cc: Representatives Burton and Horrigan